



MUNICIPAL COURT

# Judges Bulletin

Spring 2005 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 6, No. 2

## Council of Municipal Court Judges Officers 2004 - 2005

### President

Judge William M. Coolidge III, Duluth

### President Elect

Judge John K. Edwards, Jr., Valdosta

### First Vice President

Judge LeRoy Burke III, Savannah

### Secretary

Judge Kathy Gerhardt, Macon

### Treasurer

Judge A. Frost Ward, Morrow

### Immediate Past President

Judge Charles Barrett, III, Lilburn

### Editor

Chief Judge Margaret Washburn, Duluth

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### District One

Judge Kevin J. Street, Thunderbolt  
Judge Willie T. Yancey, II, Thunderbolt

### District Two

Judge Herbert W. Benson, Ashburn  
Judge John Kinsley Edwards, Jr., Valdosta

### District Three

Judge Michael P. Cielinski, Columbus  
Judge David M. Pierce, Byron, Perry, Roberta

### District Four

Judge Angela T. Butts, Decatur  
Judge Warren W. Hoffman, Stone Mountain

### District Five

Judge Elaine Carlisle, Atlanta  
Judge Calvin S. Graves, Atlanta

### District Six

Judge John Clayton Davis, Forest Park  
Judge David J. Turner, Jr., Manchester

### District Seven

Judge Herbert M. Crane, Jr., Cartersville  
Judge Diane M. Busch, Marietta

### District Eight

Judge Tommy Bobbitt, III, Dublin  
Judge Charles Merritt, Jr., Madison

### District Nine

Judge Hammond Law, III, Flowery Branch  
Judge Dennis T. Still, Norcross

### District Ten

Judge Chip Hardin, Washington  
Judge C. David Strickland, Covington

## President's Corner

John K. Edwards, Jr.  
City of Valdosta

It is with a remaining sadness that I write this President's Corner. Our Council still feels the loss of Judge Bill Coolidge and his tireless advocacy of the municipal courts throughout our State. Many of the issues Judge Coolidge worked so diligently on face our courts still: indigent defense, surcharge collections, uniform rules and membership on the Judicial Council. I know, however, that Judge Coolidge would be pleased with our continued efforts to address these challenges.

In February, the Council hosted its annual Legislative Breakfast in Atlanta. This event was not only well-attended, but offered us an opportunity to meet many of the new legislators coming into session.

All the senators and representatives we spoke with seemed open to our concerns. Guests included Ted Baggett of the Georgia Municipal Association who was kind enough to speak on our behalf with many of those in attendance.

Following the breakfast, the Council held its business meeting and I was pleased to see that so many of our judges were willing to fill those vacancies left by Judge Coolidge or agreed to continue their service to our Council, often single-handedly. I believe they each deserve our special thanks: Judge Charles Barrett as our Public Defender Standards Council Liaison and Legislative Committee

Chair; Judge Tommy Bobbitt as our Liaison to the Georgia Superior Court Clerk's Cooperative Authority and the Georgia Municipal Association; Judge Frost Ward as our Liaison to the Municipal Probation Advisory Council and Chair of the Budget Committee; Judge Michael Cielinski as Chair of the Municipal Court Judges Training Council; Judge David Pierce as Chair of the Nominating Committee; Judge Glen Ashman as Chair of the Benchbook Committee; and Judge Dennis Still as Chair of the Bylaws Committee. We are fortunate to have such dedicated liaisons, committees and committee chairs that continue to promote the interests of municipal courts and their judges.

At our meeting, we also heard from John Earle, project Director for the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA). Although he reported to us that the GSCCCA had given the municipal courts an 87% compliance rate, he did acknowledge that they were working on correcting their records regarding the actual number of municipal courts in the State. It seems that their records may reflect more municipal courts than may actually exist. This would create the appearance of a lower compliance rate. Regardless, we want to continue to ensure the full compliance of our courts with the law and the GSCCCA reporting rules as we strive to seek legislation that would make both conformity and reporting a much

continued on page 2

# Minutes of the Winter Meeting

The winter meeting of the Executive Committee of the Georgia Council of Municipal Court Judges was held on February 3, 2005, at the Sloppy Floyd Towers in Atlanta, Georgia, following the Legislative breakfast sponsored by the Council. With the passing of Judge William Coolidge, III, Judge Edwards, as President-Elect had been called upon to fill in as president for the balance of Judge Coolidge's term. Judge Edwards called the meeting to order at 9:35 a.m.

Judge Edwards introduced Ted Baggett, Associate Council for the Georgia Municipal Association (GMA), and invited him to address the meeting. Mr. Baggett advised that there are currently four areas in which the Association is involved that have impact on municipal courts. One is the enactment of a statute to authorize municipal courts to have pretrial diversion programs. Another is a proposal to provide

mandatory training and certification for municipal court clerks. In addition, GMA is seeking changes to HB1-EX, the court fines and fees legislation which was passed last year to provide a funding source for indigent defense. Changes are needed to simplify the reporting process as well as to ease the administrative burden on reporting, especially in partial payment reporting. The final area of impact he addressed was the decriminalization of traffic offenses for which there is currently a lot of support in the legislature. Mr. Baggett noted that such a move would have consequences which have not yet been thought through and so the Association is emphasizing the need to study the issue thoroughly and make any changes thoughtfully.

Judge Edwards next introduced David Ratley, Director of the Administrative Office of the Courts (AOC). Mr. Ratley thanked the Council for the breakfast and

remarked that, with the new legislative leadership, things have changed and everyone is in the process of making adjustments. Mr. Ratley feels that the legislature is more aware of municipal, magistrate and state courts and their importance to the criminal justice system, especially in view of the fact that 65% of funds collected as fines and fees come from the lower courts.

After thanking our guests, Judge Edwards addressed the agenda for the meeting, beginning with the approval of minutes from the fall meeting held in Macon on October 15, 2004. Upon motion duly made and seconded, the minutes were approved as submitted.

Judge Edwards then called for the financial report. In Bernadette Smith's absence, Ms. Moore reported on the state appropriated funds. As of December 31, 2004, \$3,468.80 of the state appropriated funds for fiscal year 2005 has been spent, leaving a balance of \$16,531.20.

Judge Ward gave the report with respect to private funds held by the Council. As of December 31, 2004, \$45,056.88 remained on deposit. Judge Ward moved for Council approval of the expenditure of funds for the legislative breakfast in the amount of \$1,105.85 and his motion was approved unanimously. He also advised that \$100.00 had been sent to the American Heart Association in memory of Judge William Coolidge, III. He gave a brief testimonial to Judge Coolidge, commenting on his devotion to the practice of law and the many pro bono activities in which he was involved, in particular, the many hours he gave to the Municipal Court Judges Council and its various activities and committees. Judge Coolidge gave so much of himself that it will not be easy to

continued on page 4

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## President's Corner continued

easier prospect.

As Chair of our Uniform Rules Committee, I am pleased to report that we have been receiving assistance from Keith Scott, former Chair of the Magistrate Court Uniform Rules Committee, who is completing a second rough draft based upon existing rules. He plans to have these ready for us before April 15th.

On June 8th, I will again represent our courts at the next meeting of the Judicial Council in Savannah. I hope to have the opportunity to address the Council at this meeting and provide them with a "state of affairs" for our courts. If you have any thoughts or particular issues you

believe should be included, I hope that you will contact me with them.

Finally, as we prepare for our annual meeting in June, please keep in mind that our Council will need judges willing to serve as President-Elect and Vice-President. If you are willing to serve or know someone who is, I hope that you will contact Judge Pierce with your nominations.

The next meeting of the officers and chairpersons of our Council will be Friday, April 15, 2005, at the Administrative Office of the Courts in Macon. I look forward to seeing you there!

## Council of Municipal Court Judges Elections, June 2005

Pursuant to Article Five, Section 2, of the Bylaws of the Council, the following named persons have been certified by the Nominating Committee as candidates for election to the offices indicated.

### OFFICERS:

**President Elect:**

Judge Michael P. Cielinski  
Judge Willie T. Yancey, II

**Secretary:**

Judge Kathryn Gerhardt

**Vice President:**

Judge Scott N.G. Childress  
Judge Bill Clifton

**Treasurer:**

Judge Frost Ward

### EXECUTIVE COMMITTEE:

**Judicial District One**

Judge Kevin J. Street  
Judge Willie T. Yancey, II

**Judicial District Six**

Judge J. Clayton Davis  
Judge David J. Turner, Jr.

**Judicial District Two**

Judge Herbert W. Benson  
Judge Willie C. Weaver, Sr.

**Judicial District Seven**

Judge Diane M. Busch  
Judge Robert L. Whatley

**Judicial District Three**

Judge Michael P. Cielinski  
Judge David M. Pierce

**Judicial District Eight**

Judge Thomas C. Bobbitt, III  
Judge Charles W. Merritt, Jr.

**Judicial District Four**

Judge Angela T. Butts  
Judge Warren W. Hoffman

**Judicial District Nine**

Judge Hammond Law, III  
Judge Dennis T. Still

**Judicial District Five**

Judge Elaine L. Carlisle  
Judge Calvin S. Graves

**Judicial District Ten**

Judge Chip Hardin  
Judge C. David Strickland

### TRAINING COUNCIL:

Judge John Clayton Davis  
Judge John K. Edwards, Jr.

# Minutes continued

replace him but, as Judge Frost mentioned in closing, we were fortunate to have crossed paths with him.

Judge Edwards, in giving the President's report, also expressed condolences over the death of Judge Coolidge and commented on the great impact Judge Coolidge had on the Council since he served as the point man on so many fronts. Judge Coolidge will be sorely missed.

Marla Moore then gave the report from the AOC. She noted that the Annual Report for fiscal year 2002-2003 had recently been completed and should be received by mail. It includes caseload data, but is not complete due to all courts not submitting information. The AOC will continue to place municipal caseload data in future editions; the report for 2003-2004 will be ready by June. At the present time, the AOC is involved with the legislature, keeping track of bills to see how they will affect the courts and if the AOC needs to take a position. She introduced Hunter Chandler, an intern with the AOC, who has been assigned to track municipal court legislation. In closing, Ms. Moore announced the IT Division has reorganized.

The next item on the agenda was the election of the vice president and a training council member to fill the slot vacated by Judge LeRoy Burke when he was appointed Judge of Juvenile Court. According to Article 5 of the Council Bylaws, the vice president should be appointed by the remaining officers so Judge Edwards will meet with the secretary and treasurer to select a vice president. The bylaws do not address the replacement of training council representatives but, since representatives are nominated/elected by the Council of Municipal Court Judges, it was determined that it would be

appropriate for this vacancy on the training council to be filled by election of the Executive Committee. Judges Dennis Still, Robert Whatley, Scott Childress and Clay Davis were nominated to serve as representative and, after a vote was taken, Judge Still was elected to this position.

Before asking for committee reports, Judge Edwards advised that he had named Judge Diane Busch to chair the Interpreters' Committee to fill the vacancy in that position. Additionally, Judge Barrett would serve as chair of the Legislative Committee. All other committee chairs would remain as appointed by Judge Coolidge.

## Committee Reports:

- Judge Barrett reported for the Legislative Committee. He reported that the Council is supporting the same two bills which had been proposed the previous year. One would authorize the creation of a pretrial diversion program for municipal courts. That bill is not controversial and should pass this year. The other bill is one to allow continuances for part time judges that are attorney's and have conflicts regarding appearing in other courts. He reported he was informed by Wendall Willard that this bill requires some action with the AOC if it is to be enacted in this session. Ms. Moore is to speak with Debra Nesbit, Associate Director for Legislative and Governmental Affairs, AOC, in regards to the status of this bill.

- Ms. LaShawn Murphy reported on behalf of Judge Ashman, chair of the Benchbook Committee. The benchbook updates are on track and will be available in the Spring.

Reports on liaisons with the following agencies were then given:

(1) Judicial Council. Judge Edwards deferred this report to Ms. Moore. She reported that at its last meeting, the Judicial Council focused on legislation that did not deal much with issues pertinent to municipal courts. Judge Edwards will attend the next meeting and give a report at the next Executive Committee meeting.

(2) Georgia Municipal Association. Judge Bobbitt noted that the GMA is waiting on the Public Defenders Standards Council to determine standards for public defenders for municipal courts to use in setting up acceptable indigent defense programs. GMA is hoping to come up with some simple interim guidelines to be used until the standards come out and will post them on the GMA website.

Judge Still announced the City of Lawrenceville's Ordinance is on the website; however, theirs is not for use with public defenders

(3) Probation Advisory Council. Judge Ward reported that private probation continues to grow with respect to the number of probationers and the total collections by private probation services. The Council is now working on legislation which would require minimum training standards for probation officers. He also announced the Council will be appointing a new sheriff representative soon.

(4) Georgia Superior Court Clerks Authority (GSCCCA). Judge Bobbitt introduced John Earle, Project Manager for GSCCCA's fees and fines program. Mr. Earle passed out Remittance and Reportable Reports to date. He pointed out that the three main objectives of the authority were: accountability, uni-

continued on page 5

# Minutes continued

formity, and funding indigent defense. With respect to accountability, he noted that improvements had been. For example, municipal courts were in the 55% range, due to a discrepancy in the actual number of courts they had listed, with respect to reporting and submitting fines and fees collected and were now in the 86% range. As to uniformity, he noted that with the issuance of standardized forms and rules and regulations, all courts are reporting uniformly. The goal of funding indigent defense has not been as successful. When the legislation was enacted, it was projected that \$55,000,000 would be collected and, at the time of the meeting only about \$16,000,000 had actually been received. Mr. Earle advised the Council that his office wishes to be service to courts and has a website [www.courttrax.org](http://www.courttrax.org) which provides information that should be useful. A calculator for use in calculating and allocating fines and surcharges has been finalized and will be posted online. He also announced that the following changes to HB1EX would be looked into during this session: Striking the language in the current bill stating it is a criminal punishment for holding money, local money coming to the Authority will be changed to go directly to the county board of commission then forwarded to the district attorney office, and they are going to push for a flat rate for fees. In final, Mr. Earle gave his phone number, 404/327-7230, and invited anyone with questions to contact him.

(5) Public Defenders Standards Council. Judge Barrett reminded the Council that all courts were required to have some sort of indigent defense program in place by January 1, 2005, or they lose criminal jurisdiction. Because the PDSC had not yet published standards, Resolution13-04

was passed that said that if a court was providing counsel to indigents it was in compliance until such time as the standards were promulgated. Judge Barrett also noted that the Council had some forms which had been developed by Judge Coolidge for use by indigents in applying for counsel and the forms are available if anyone would like to have them. Judge Edwards suggested sending a survey inquiring about the usage of Indigent Defense programs. This way the Council would have data on this area.

(6) Judges Training Council. Judge Cielinski reminded the Council that the material with respect to training for municipal court judges has been sent out and all judges need to get their applications in to register for the seminars they would like to attend. He also reported, the Institute for Continuing Judicial Education is, at this time, working on a new seminar which would be a cross class of courts seminar and hopes to have information on it available by May.

Under the heading of old business, Judge Edwards noted that Judge Coolidge had planned to write a letter to respond to the Chief Justice report on indigent defense but died before he was able to do so. Judge Barrett will follow up on this. He will attempt to gather some data from various municipal courts as to what is actually being done in these courts and draft a response when he has that information.

Next item of old business was the uniform rules consultant. Judge Edwards reported that he had received little response to his request for assistance in drafting uniform court rules for municipal courts. After much discussion, Judge Bobbitt suggested contacting Keith

Scott, former magistrate and Rules Committee Chair, for this purpose. Ms. Moore to contact Mr. Scott regarding obtaining his services.

Ms. Moore reported, Judge LaVerne Ogletree, who is also a magistrate judge and chair of the Traffic/Criminal Jurisdiction Committee, is in the process of creating a criminal benchbook and would like to partner with the municipal judges on the project. Judge Edwards thought this was an excellent idea.

At the fall meeting of the Executive Committee, a suggestion had been made that the Council consider setting up a scholarship fund which could be used to help judges with the cost of attending seminars. It was recommended that guidelines in place for magistrate and probate courts be consulted to assist in setting up such a fund. Judge Edwards will follow up on this so that a decision can be made at the spring meeting.

By way of new business, Judge Still recommended that a donation be made to the Young Trial Lawyers Division of the State Bar for its Georgia High School Young Lawyer Association in memory of Judge William Coolidge, III. A donation in the amount of \$1,000 was approved. Ms. Moore to obtain the address and forward the information to the treasurer.

Judge Davis then asked if he could bring to the attention of the Council the existence of a program called Courage to Live which is sponsored by the National Judicial College in Reno, Nevada. The college will provide training for judges if they are willing to implement the program in their locality. He pointed out that it is an excellent outreach

continued on page 6

# Municipal Court and City Court of Atlanta

Summary by Judge Deborah Greene, Municipal Court of Atlanta

*Reprinted from a Special to the Gwinnett County Bar Association Newsletter*

Since November 2002, Mayor Shirley Franklin of the City of Atlanta has worked on her goal of improving the operations of the courts of the City of Atlanta. She formed the Municipal and City Court Review Panel and subsequently utilized the Boston Consulting Group along with the National Center for State Courts to perform analysis of both the Municipal Court and the City Court of Atlanta. The unanimous recommendation was to consolidate the functions of both courts into one single court. (Atlanta is the only city in the State of Georgia with a dual court system.)

In 2004, the City of Atlanta requested that the General Assembly repeal the act that authorized the City to create the City Court of Atlanta. The legislation passed and was signed by the Governor, but required an intergovernmental agreement between the impacted jurisdictions. An intergovernmental agreement with Dekalb County has been reached but none with Fulton County.

The actual consolidation of the two courts began in the summer of 2004 when drafts outlining the number of judges, staff and administrative structure went from recommendation to plan. During the fall of 2004, these plans were formalized through the budget process of the Atlanta City Council. Until and if an Intergovernmental Agreement with Fulton County is reached, both the Municipal Court of Atlanta and the City Court of Atlanta will remain, however the former will be expanded while the latter is reduced.

On December 10, 2004, all new cases occurring in the City of Atlanta have been and will be filed in the

Atlanta Municipal Court. Judges from the Municipal Court and a few judges from the City Court hear these cases each day. Cases filed before this date in the City Court remain before City Court judges. In addition, all cases with a jury demand, be they originally filed in the City Court or filed in the Municipal Court and bound over, go before City Court judges.

To visualize the structure, think of the Municipal Court as an eleven-judge court divided into two operational parts. One is the "core group" comprised of seven judges who hear the bulk of the cases currently filed in Municipal Court.

The second grouping is the "specialty group" and is comprised of judges hearing Community Court cases, Specialty Court cases such as housing/commercial maintenance matters, taxi, sign ordinance, noise, fire and alcohol code violations and other similar matters.

By adding an additional morning and afternoon traffic calendar, we are reducing the size of the calendars, which makes for better service to both the public and the law enforcement officers.

Finally, we have three judges hearing jury trial cases five days a week. We anticipated an increase in jury demands and made certain there were enough resources to meet that demand. If a defendant wants a jury trial, we can meet that need promptly.

The court's supporting administration has been reconfigured into four areas, comprised of the Clerk's Office, Data Entry, Call Center, and Bonds/Warrants/Records area. There are additional managers coordinating courtroom operations, managing

HR, Budget and Finance.

Since physically moving the Municipal Court during the last week of December 2004, we've had two primary issues to deal with. First is the issue mentioned above. It's been difficult to make certain that every case is before the proper judge. As time goes by, this becomes less of an issue since there are no new cases being filed in the City Court.

The second problem we've been working to resolve concerns the public. Consolidating these courts has been and will continue to be a substantial undertaking. Getting all the court staff to grasp and master the changes has been understandably difficult. Our ability to relay that information to the public accurately and quickly is an area we're concerned with and working on.

As we continue on this journey, we are constantly "tweaking" our calendars and our resources in order to maintain the maximum efficiency of the court with the service to our citizens.

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## Minutes continued

program and encouraged all judges to consider getting involved.

As the final order of business, Judge Edwards advised that the next Executive Committee meeting has been scheduled for April 15th at the AOC office in Macon.

There being no further business, the meeting was adjourned.

Respectfully submitted,  
Kathryn Gerhardt, Secretary

# A Cry of Fear from a Most Unusual Source

**Robert L. Whatley, Pro Hac Judge,  
City of Austell Municipal Court**

**A**mong the posturing, analysis, finger pointing, denials, shifting of blame, and explanations of blame, little has been mentioned about security in the respective traffic courts by whatever name they have been called. In Georgia, it may be called City Traffic Court, Records Court, Joint City-County Traffic Court, or some other designation under "Special Courts". In other states it could be under a myriad of names.

The Courtroom Atlanta shootings have indeed focused unwanted

attention in Georgia and across the nation. But the "little" about the municipal and traffic courts has come from a very creditable and prestigious source and cannot be discounted and ignored. Indeed many of us consider the matter a concern for state, superior, and federal courts. But listen to this assessment:

Judge Gladys Kessler of the United States District Court for District of Columbia opines a very weighty statement. Says the judge: "Traffic courts are the most volatile courtrooms that exist." Think about her court in comparison. She most likely conducts matters involving large narcotic cartels, presidential

assassin suspects, and mass murders on federal property. Yet her position stands firm.

Do we concur in her concern? On court night, perhaps one lone policeman or maybe a few more in larger jurisdictions stand sentry. Many are mere bailiffs with little hostile situations training. Hopefully the overall awareness will bring us as invited guests to the task-force tables.

That needs be.

If her opinion carries currency, that currency cannot be devalued by indifference and non-applicability.

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## Judges' Duty and Safety

New York Times  
Editorials/Op-Ed  
Published: April 13, 2005

To the Editor:

"The Judges Made Them Do It" (editorial, April 6):

On behalf of 1,200 dedicated members of the American judiciary, I urge public vigilance to protect and defend the role of an independent judiciary in the wake of the tragic Terri Schiavo case and the horrific

violence against judges in Chicago and Atlanta.

Our system of democracy depends on judges being supported in the exercise of their constitutional obligation to protect the basic rights of individuals and decide cases fairly. Those decisions must be made according to the law, without regard to public pressure and without fear of political reprisal.

We are especially concerned about the inflammatory post-Schiavo

political rhetoric urging punishment of the judges who ruled in the case. In this overheated political environment, it is particularly irresponsible to urge retaliation against judges who, with near unanimity, made difficult decisions under the most stressful of circumstances.

As Justice Anthony M. Kennedy has said: "The law makes a promise - neutrality. If the promise gets broken, the law as we know it ceases to exist. All that's left is the dictate of a tyrant, or perhaps a mob."

Sandra Thompson  
Torrance, Calif., April 6, 2005  
*The writer is president of the National Association of Women Judges.*

PLEASE  
RECYCLE



# Case Law Update I

By Mickey Roberts, Esq., Duluth, Ga

## ACCUSATIONS/UTC

State v. Cooper A04A1796 2/24/05 Court of Appeals upholds dismissal of Cooper's DUI, primarily because of incomplete record; basis of Cooper's defense was that under 17-4-23(a), a citation can only be issued if the officer witnesses an act constituting the offense, or another officer observed the offense and conveyed such information to the arresting officer, or there is an accident whereby the officer issues citations. In this case there was no evidence that Cooper was taken into custody, under 17-4-20(a), in which case the trial court's decision would have been reversed.

## ARTICULABLE SUSPICION/ARREST

Leinhardt v. St A04A2099 1/7/05 Leinhardt was stopped for expired tag; officer smelled alcohol, noticed Leinhardt's eyes were bloodshot; also sensor was positive; HELD: Officer had probable cause to arrest Leinhardt for DUI.

## CONSTITUTIONAL QUESTIONS

Skinitis v. St. A04A2191 2/9/05 Skinitis' Motion to Suppress was denied. He plead guilty to DUI, then appealed; HELD: A defendant waives any error in the denial of his motion to suppress by pleading guilty.

## FIELD SOBRIETY

State v. Tousley A04A1880 3/3/05 This case(my case) involved the trial court's granting both a motion to suppress HGN and a motion to suppress for lack of probable cause. The gist of the ruling is that even though the HGN may be admissible, the trial court, sitting as a trier of fact in a motions hearing, can decide

how much weight and credibility to give to the hgn in determining probable cause.

Loden v. St. A05A0536 2/14/05 Test for determining whether a person is in custody at a traffic stop (and therefore triggering Miranda warnings) is if a reasonable person in the suspect's position would have thought the detention would not be temporary.

## EVIDENCE

Stephens v. St. A04A1607 2/15/04 Defendant was found passed out behind the wheel of his car haphazardly parked, with the engine running and lights on. He had vomited, admitted driving, failed field tests, and refused breath test. Evidence was sufficient for conviction.

## IMPLIED CONSENT

Costley v. St. A05A0734 Costley was convicted of vehicular homicide based on test results requested by officer under 40-5-55, because Costley was involved in an accident

resulting in a fatality; however, since that statute was found unconstitutional under Cooper v. St., 277 Ga. 282, followed by Handschuh v. St., A04A0838, the test results showing presence of methamphetamine should have been suppressed.

St. v. Allen A04A2128 Court reversed trial court's suppression of breath test; Allen initially told officer she was uncertain as to whether she would take test or not. At the jail, the officer told Allen he would set up the Intox and give her an opportunity to decide whether to take the test. Allen stood up and blew into the machine. The case was distinguished from Howell v. St., 266 Ga App 480. In Howell, Defendant unequivocally refused the test, yet the officer nevertheless instructed another officer to have Howell blow into the machine.

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## Living in Atlanta, Part One

Atlanta is the home of Coca-Cola. That's all we drink here, so don't ask for any other soft drink unless it's made by Coca-Cola. And even then it's still "Coke." A carbonated soft drink isn't a soda, cola, or pop...it's a Coke, regardless of brand or flavor. Example: "What kinda coke you want?"

Gate One at Atlanta's Hartsfield International Airport is 32 miles away from the Main Concourse, so wear sneakers and pack a lunch.

It's impossible to go around a block and wind up on the street you started on. The Chamber of Commerce calls it a "scenic drive" and has posted signs to that effect, so that out-of-towners don't feel lost...they're just on a scenic drive."

The 8:00 AM rush hour is from 6:30 to 10:30 AM. The 5:00 PM rush hour is from 3:00 to 7:30 PM. Friday's rush hour starts Thursday afternoon, and lasts through 2:00 AM Saturday.

# Case Law Update II

By Judge Robert V. Rodatus, Presiding Judge Gwinnett County Juvenile Court

## CRIMINAL LAW DRUG COURT

Even though no formal sentence had been imposed the Supreme Court determined that a defendant does not retain the unqualified right to withdraw their plea in a drug court prosecution. State v. Stinson 04FCDR2968 (09/13/04).

## CUSTODY SUPPORT

The parties agreement provided for an automatic change in condition in the event of a move outside of a proscribed area. This is in violation of the Scott decision (276 Ga. 372 (2003)). Additionally the trial court erred in reducing child support by one third as each of the children reached the age of eighteen since the reduced ward would fall below minimum child support guidelines. Scott-Lasley v. Lasley 04FCDR3412 (10/25/04).

## DIVORCE NOTICE OF CONFLICT

In his conflict letter counsel for one of the parties stated that this case would take precedence over other legal matters he was handling. Subsequently he asked to be taken

off the calendar and told his client the case was being reset due to conflicts. When neither he nor his client appeared the hearing proceeded and the Court entered a final judgment and decree of divorce. The Court found that once he had sent his conflict letter prioritizing this case he as counsel had no discretion in determining the order in which the cases were to be tried. Only by agreement by judges of the affected courts could it be changed. Withrow v. Withrow 04FCDR3119 (09/27/04).

## JUDGES RECUSAL

This case contains a laundry list of things not to do during a murder trial. These include telling defense counsels to "sit down and shut up"; not to interrupt the states cross examination by making objections; and instructing the prosecutor in an ex parte conversation to develop a record concerning whether witnesses have been intimidated by the defendant's brother. Additionally the trial judge had stated his conclusions regarding the defendant's guilt before the trial began but since they

were outside the presence of the jury this alone would not have required reversal. Johnson v. State 04FCDR2991 (09/13/04).

## TERMINATION RIGHT TO COUNSEL

Did the mother waive her right to appointed counsel? Further, was she indigent? It was the trial court's duty to make these determinations and it was improperly delegated to indigent counsel without the court making any findings regarding her financial affairs. The court also failed to determine whether she had exercised reasonable diligence in obtaining representation. Although the evidence did support a termination of her rights the case was remanded for the court to make a determination of whether or not she had waived counsel or was entitled to appointed counsel based on indigency. In the Interest of: A.N.A. 04FCDR3949 (12/06/04).

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## Living in Atlanta, Part Two

ATLANTA GEORGIA This is for anyone who lives in Atlanta, who has ever lived in Atlanta, has visited Atlanta, ever plans to visit Atlanta, knows anyone who lives in Atlanta, knows anyone who has ever visited Atlanta or anyone who has ever heard of Atlanta, Georgia.

Atlanta is composed mostly of one way streets. The only way to get out of downtown Atlanta is to turn around and start over when you reach Greenville, South Carolina. All direc-

tions start with, "Go down Peachtree" and include the phrase, "When you see the Waffle House." Except that in Cobb County, all directions begin with, "Go to the Big Chicken and..." Peachtree Street has no beginning and no end and is not to be confused with Peachtree Circle, Peachtree Place, Peachtree Lane, Peachtree Road, Peachtree Parkway, Peachtree Run, Peachtree Trace, Peachtree Ave, Peachtree Commons, Peachtree Battle, Peachtree Corners,

New Peachtree, Old Peachtree, West Peachtree, Peachtree-Dunwoody, Peachtree-Chamblee, or Peachtree Industrial Boulevard.

Atlantans only know their way to work and their way home. If you ask anyone for directions they will always send you down Peachtree.

"Sir" and "Ma'am" are used by the person speaking to you if there's a remote possibility that you're at least 30 minutes older than they are.

# GOLF TOURNAMENT

## 6th ANNUAL COUNCIL OF MUNICIPAL COURT JUDGES GOLF TOURNAMENT

The 6th Annual Council of Municipal Court Judges Golf Tournament has been set for Tuesday morning, June 21, 2005, at 11:00 A.M. at THE CLUB AT SAVANNAH HARBOR. These arrangements have been made with the help and assistance of Judge Lawrence Dillon, Chief Judge of the Recorder's Court of Chatham County.

The registration fee of \$80.00 covers green fees, cart and prizes. Scoring will be on the Calloway Method so everyone (in theory) will have an equal chance to win. There will also be prizes for Long Drive and Closest to the Pin. Please submit your registration along with a check in the amount of \$80.00, payable to ADAMS & BROOKS, Trust Account, by June 3, 2005.

REGISTRATION IS LIMITED TO 28 PARTICIPANTS.



Club at Savannah Harbor  
1 Resort Drive  
Savannah, Georgia 31421  
June 21, 2005 at 11:00 AM

Fee \$80.00

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE#: \_\_\_\_\_

Mail Registration Form & Fee to:  
John Adams, Adams & Brooks  
203 West Main Street  
Folkston, Georgia 31537

For Inquiries, e-mail: [tellno1@alltel.net](mailto:tellno1@alltel.net)

**ENTRIES DUE BY June 3, 2005**

# 2005 Agenda of the Probation Advisory Council Contains Sensible Goals

By Ashley Garner, AOC

The County and Municipal Probation Advisory Council (CMPAC) is interesting among regulatory bodies. The eleven council members blend officials from both the Executive and Judicial branches of government and one private probation company representative. The purpose of the council is to provide for the application and approval of private probation entities; insure that uniform professional and contract standards are practiced and maintained by the private probation corporations and their affiliated partners; and provide for the inspection and investigation of all of these entities and enforcement of the registration requirements.

Judge Frost Ward, Municipal Court of Morrow, has been your representative on the council since its inception in 1996. Other members of the council are: Carl Camon, Chair - Mayor of Ray City; Chiquiti A. Dean, Vice Chair - Chief Probation Officer, Atlanta State Probation Court Services; Judge Jim Burton - Probate Court of Wilkes County; Sheriff Steve Cronin - Hall County Sheriff's Department; Judge Neal Dettmering, Jr. - State Court of Douglas County; Michael Nail - Director, Probation Division, Georgia Department of Corrections; Judge John M. Ott - Superior Court, Alcovy Circuit; Steve P. Page - Georgia Probation Management Company; Marion Stevens, Sr. - County Commissioner - District I; Judge Jim Thurman - Magistrate

Court of Lee County. CMPAC is staffed by the Administrative Office of the Courts.

Here are some items of interest to look for this year:

- The council, which meets quarterly, identified education and implementation of contract standards as a focus for 2005. Staff is taking every opportunity to educate providers, court officials and the public on private probation and the need for contract standards to be maintained.
- All private probation providers just completed their 2005 Registration Renewal Packets. Staff to the Council will review each company's sample contract to determine if it contains the elements required by both Georgia law and Council rules. They will then review the actual contracts to ensure that they are also in compliance.
- Staff to the Council fields complaints on the private probation industry from any source. The Council is updated quarterly on any trends in complaints for informational and educational purposes. Complaints concerning violations of Georgia Law are referred to the proper State and local law enforcement entities for further investigation. Complaints concerning violations of Council Rules and Regulations are reviewed and brought before the Council as necessary.
- Private Probation Providers submit quarterly reports to CMPAC. These reports reflect quarterly summaries of financial and caseload information. Staff is working with the

Council, providers, and various stakeholders to clarify several of the definitions used when calculating reporting information to ensure that the resulting data regarding offenders is comparable with the same information generated by other sources. The data collected is only published in aggregate form, not on a "by company" basis. There are too many variables within the courts and the companies to be able to do meaningful comparisons.

- Staff is also working to make sure all entities are educated on private probation and the difference between offender success and provider success. Offender success is measurable through compliance with court sentences, and provider success is often both measurable and subjective. What one court considers quality service, may not please another.
- Staff is available to speak with any group interested in learning more regarding private probation and the County and Municipal Probation Advisory Council.

For further information or to be placed on our mailing list for meeting notices, please contact: Ashley C. Garner, Compliance Analyst, [garnera@gaaoc.us](mailto:garnera@gaaoc.us) at 404-463-1319. The operating rules, a sample contract, and the current list of registered private probation providers is found on the AOC website at <http://www.georgiacourts.org/councils/pac.html>

# Change in Personnel Form

THE ADMINISTRATIVE OFFICE OF THE COURTS

SUITE 300

244 WASHINGTON STREET, S.W.

ATLANTA, GEORGIA 30334-5900

404-656-5171

FAX: 404-651-6449

## NOTIFICATION OF CHANGE IN MUNICIPAL COURT PERSONNEL

CHIEF JUDGE ☐

JUDGE ☐

PRO HAC ☐

PRO TEM ☐

CLERK ☐

DEPUTY CLERK ☐

CITY (List all) \_\_\_\_\_

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

PHONE(\_\_\_\_) \_\_\_\_\_ FAX (\_\_\_\_) \_\_\_\_\_

EMAIL \_\_\_\_\_

GENDER: Female ☐ Male ☐

ATTORNEY: Yes ☐ No ☐

ELECTION/APPOINTMENT DATE: \_\_\_\_\_ TERM from \_\_\_\_\_ to \_\_\_\_\_

Replacing Someone ? \_\_\_\_\_ If So, Who? \_\_\_\_\_

RACE (optional): African American (Black) ☐ Asian / Pacific ☐

Euro American (White) ☐ Native American ☐

Multi Racial ☐ Hispanic / Latin ☐

Fax or mail this form to the Administrative Office of the Courts at the address above.

Submitted by: NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

PHONE # \_\_\_\_\_

# Wealth Creation Strategies

## *Learning the Truth Could be Costly*

With all the confusion, catastrophic events and stock market unknowns, now is a time that many are looking for safety, surety and thrift. The fact that our language and our definition of words has actually changed over the last 50 years has become more evident. Certain financial institutions and medias have succeeded in convincing most Americans that past words such as "savings" and "pension" could be used interchangeably with the new "401(k)" and other employee retirement programs.

Now the truth has been exposed. Millions of people have lost 30%, 50% and even up to 100% in their company-sponsored "savings" plan.

Webster defines the word "savings" as follows: "1. to preserve from harm. 2. to keep for future use. 3. to prevent loss. 4. to treat carefully. 5. to keep from danger. 6. to store up." Please help me understand how the "401(k)" can even have the word "savings" associated with it? A 401(k) Investment Plan, a 401(k) Risk Plan, or a 401(k) Speculation Plan I could live with but not 401(k) "Savings" Plan. It is hardly the correct use of the English language.

Before you play the 401(k) game, make sure you understand the rules. We don't even know what the rules will be when we go to take the money out. I'm not saying that 401(k) can not be used to help build for the future. The fact is most peo-

ple don't understand the game nor the proper diversification strategy to win. It is obvious now that many people have been much too aggressive with their investment strategies and maybe common sense will prevail in the future.

Remember, "long haul investing" only works if companies stay in business. Too much speculation now may result in zero in the future.

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Roswell, GA 30076  
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## Living in Atlanta, Part Three

A native can only pronounce Ponce De Leon Avenue one way, so do not attempt the Spanish pronunciation. People will simply tilt their heads to the right and stare at you. The Atlanta pronunciation is "pahns duh LEE-on"

The fall of a raindrop makes everyone forget all traffic rules.

If a single snowflake falls, the city is paralyzed for three days, and it's on all the TV channels and radio stations as a news flash every 15 minutes for a month. All the grocery stores will be sold out of milk, bread, bottled water, toilet paper, and beer. If there is a remote chance of snow, and if it does snow, people will be on the corner selling "I survived the blizzard" tee-shirts, not to mention the fact that all schools will close at the slightest possible chance of snow.

The pollen count is off the national scale for unhealthy, which starts at 120. Atlanta is usually in the 2,000 to 4,000 range. All roads, vehicles, houses - everything - are yellow from March 28th to July 15th. If you have any allergies, you will die. But other than, that, it's a great place to live!

There are 5,000 types of snakes and 4,998 live in Georgia.

There are 10,000 types of spiders. All 10,000 live in Georgia, plus a couple no one's ever seen before.

"Onced" and "Twiced" are actual words.

It is not a shopping cart, it's a buggy.

There ain't no such thing as "lunch." There's only dinner - and, then, there is supper. 'Jeetyet?' is actually a phrase meaning "Did you eat yet?"

You install security lights on your house and garage - and then leave both unlocked.

The local papers cover national and international news on one page, but need 6 pages for local gossip and sports.

You know whether another Georgian is from north Georgia, south Georgia or middle Georgia as soon as they open their mouth (Albany = All benny).

Going to Wal-Mart is a favorite past time known as "goin wal-martin" or "off to Wally World."

Sweet Tea is appropriate for all meals and you start drinking it when you're 2.

# Legislative Breakfast



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## Council of Municipal Court Judges

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